IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9361 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGVAN MIRCHUMAL - Petitioner(s)

Versus

AHMEDABAD MUNICIPAL CORPORATION - Respondent(s)

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Appearance :

MR KV SHELAT for Petitioner(s) : 1,
MR MM TIRMIZI for Petitioner(s) : 1,
M/S ANAND ADVOCATES for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/11/2005

ORAL JUDGMENT

In the present petition, the petitioner has prayed for an order or direction to the Ahmedabad Municipal Corporation to allot a shop in the new fruit market as an

alternative accommodation as per the policy of the Corporation.

2. In response to the notice issued by this Court, affidavit in reply dated 20th March 2001 has been filed by the respondent Municipal Corporation. In the reply, it is specifically stated that the petitioner has filed Civil Suit No.5547 of 1997 to allot a shop as an alternative accommodation as per the policy of the Corporation. It is stated that the subject matter and the parties in the said Civil Suit No.5547 of 1997 are the same as that of the present petition. The petitioner has thus availed of alternatively remedy of filing civil suit. It is contented that the petition is therefore not maintainable.

3. In reply to the affidavit filed by the respondent, the petitioner has not filed any rejoinder controverting these factual averments made on oath. I therefore see no reason to discard these factual averments. When the petitioner has already filed Civil Suit for the very same purpose for which the present petition is filed, it is not possible to entertain the petition and the same is therefore rejected. Rule is discharged with to order as

to costs.

(Akil Kureshi, J.)

(vjn)